

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JANET CLAYBROOK,

Plaintiff,

v.

**PAULA DUNNING AND
TIME DEFINITE SERVICES,
TRANSPORTATION, LLC.**

Defendants.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, Time Definite Services Transportation, LLC, by and through its counsel of record and pursuant to 28 U.S.C. § 1332(a), respectfully submits this Notice of Removal, removing the above-entitled lawsuit from the 96th District Court, Tarrant County, Texas, to the United States District Court for the Northern District of Texas, Fort Worth Division. Removal is proper on the following grounds:

1. On September 1, 2015, Plaintiff, Janet Claybrook ("Plaintiff"), commenced an action against Paula Dunning and Time Definite Services Transportation, LLC (collectively "Defendants"), in the 96th District Court, Tarrant County, Texas. *See Exhibit B-1.*¹

2. Plaintiff's Original Petition With Written Discovery in the state court proceeding was served on the registered agent for Time Definite Services Transportation, LLC ("TDST") on September 10, 2015. *See Exhibit B-1.*

¹ Defendant's exhibits referenced herein are filed separately in their Appendix in Support of Defendant's Notice of Removal.

3. Plaintiff's Original Petition With Written Discovery in the state court proceeding was served in the name of Defendant Paul Dunning("Dunning"), with Tryon Lewis, Chair of the Texas Transportation Commission on behalf of Defendant Dunning on September 22, 2015. *See Exhibit B-4.*

4. Defendant TDST filed its Original Answer in the state court proceeding on September 25, 2015. *See Exhibit B-5.*

5. Defendant Dunning has not yet filed a responsive pleading in the state court proceeding as Defendant Dunning is deceased. Defendant Dunning passed away in July 2015. A suggestion of death has been filed in the state court proceeding. *See Exhibit B-6.*

6. No other pleadings are on file with the clerk of the state court and the state court has entered no orders in this action. *See Exhibit A.* No hearings are set in the state court action. *Id.*

7. Removal of this action is permitted pursuant to 28 U.S.C. § 1332 (a), since there is complete diversity of the parties that existed both at the time the lawsuit was filed and at the time of removal as set forth below:

- a. Plaintiff is a citizen of the State of Texas. *See Exhibit B-1, ¶2.1.*
- b. Defendants TDST is a limited liability company with its location of formation in the State of Florida and principal places of business in the State of Florida and the State of Illinois. TDST is comprised to two managing members, both of which are citizens of the State of Florida.

c. Defendant Paula Dunning (“Dunning”) was a resident of the State of Florida at the time of the accident and at the time of her death in July 2015. *See Exhibit B-1*.

d. The amount in controversy exceeds \$75,000.00, excluding interest and costs, as Plaintiff contends her damages exceed \$100,000, as stated in the Petition. *See Exhibit B-1*, at ¶3.1.

8. Defendant TDST was served with the initial pleadings in the state court action on or about September 10, 2015. This Notice of Removal is timely under 28 U.S.C. § 1446(b), being made within 30 days of receipt, through service or otherwise, of the initial pleadings setting forth Plaintiff’s claims for relief upon which this action is based.

9. Venue is proper under 28 U.S.C. § 1446(a) as the 96th District Court, Tarrant County Texas is located within the United States District Court for the Northern District of Texas, Fort Worth Division.

10. Consent to removal by Defendant Dunning could not be obtained at the time of the filing of this Notice of Removal as Defendant Dunning is deceased, and therefore, not a proper party to the suit. *See Exhibit B-6*.

11. Both Plaintiff and Defendant TDST demanded a jury trial in state court. *See Exhibits B-1*, and *B-5*.

12. Pursuant to 28 U.S.C. § 1446(a), Defendant has attached all the state court process, pleadings, and orders served upon them, including the discovery requests included in Plaintiff’s Petition. Attached in the supporting

appendix, in accordance with Rule 81.1(a)(3) of the Local Rules of the Northern District of Texas, and incorporated herein by reference are the following:

- *Exhibit A*: Copy of the Docket Sheet for Cause No. 096-280741-15, in the 96th District Court, Tarrant County, Texas;
- *Exhibit B*: An index of documents filed in above-referenced suit, arranged in chronological order according to the state court file date, following by the referenced documents:
 - *Exhibit B-1*: Plaintiff's Original Petition With Written Discovery filed September 1, 2015;
 - *Exhibit B-2*: Civil Case Information Sheet;
 - *Exhibit B-3*: Letter to the Clerk regarding citations filed September 1, 2015;
 - *Exhibit B-4*: Return of Citation to Texas Transportation Commission on behalf of Paula Dunning files September 22, 2015;
 - *Exhibit B-5* Defendant Time Definite Services Transportation, LLC's Original Answer files September 25, 2015;
 - *Exhibit B-6*: Suggestion of Death of Paula Dunning; and
- *Exhibit C*: Certificate of Interested Persons in accordance with Local Rule 3.2(e).

13. A copy of this Notice of Removal is attached to the Notice of Filing of Notice of Removal filed with the 96th District Court, Tarrant County, Texas, as required by 28 U.S.C. § 1446(d). Defendant will serve and certify service of

copies of this Notice of Removal on Plaintiff as required under 28 U.S.C. § 1446(d).

WHEREFORE, Defendant TDST respectfully requests the above-entitled action now pending in the 96th District Court, Tarrant County, Texas, be removed to the United States District Court for the Northern District of Texas, Fort Worth Division, and that said Court assume full jurisdiction over the cause herein as provided by law.

Respectfully submitted,

**SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.**

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ATTORNEYS FOR DEFENDANT
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TRANSPORTATION, LLC

CERTIFICATE OF SERVICE

On October 9, 2015, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas via ECF. I hereby certify that I have served all counsel of record listed below electronically or by another manner authorized by the Federal Rules of Civil Procedure.

____ E-Service
____ Certified Mail, RRR
____ Regular First-Class Mail
____X____ Facsimile

Wade A. Barrow
Law Offices of Steven C. Laird
1824 8th Avenue
Fort Worth, TX 76110
Fax: 817-923-2228

/s/ John W. Greene
John W. Greene

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